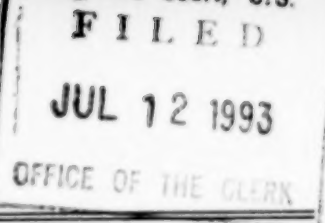


No. 92-6921



In The
Supreme Court of the United States

October Term, 1993

JOHN PATRICK LITEKY, CHARLES JOSEPH LITEKY,
AND ROY LAWRENCE BOURGEOIS,

Petitioners,

v.

UNITED STATES,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

JOINT APPENDIX

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SICOLI, LTD.
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Counsel for Petitioners

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2255

Counsel for Respondent

**Petition For Certiorari Filed December 14, 1992
Certiorari Granted May 24, 1993**

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RELEVANT DOCKET ENTRIES

January 23, 1991	Indictments.
February 7, 1991	Motions to Recuse and Memorandum in Support.
February 22, 1991	Response to Motions to Recuse.
February 25, 1991	Order on Defendants' Motion to Recuse.
March 25-26, 1991	Jury Trial.
June 21, 1991	Judgments and Sentencing.
June 21, 1991	Notice of Appeal.
June 27, 1991	Orders determining no probable cause for appeal.

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA	:	CRIMINAL NO:
	:	91-93-COL-JRE
vs.	:	Violations:
JOHN PATRICK LITEKY,	:	18 U.S.C. § 1361
CHARLES JOSEPH LITEKY,	:	18 U.S.C. § 1382
and ROY LAWRENCE BOURGEOIS	:	

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 16th day of November, 1990, in the Middle District of Georgia the defendants, to-wit:

JOHN PATRICK LITEKY,
CHARLES JOSEPH LITEKY,
and ROY LAWRENCE BOURGEOIS,

wilfully and be [sic] means of slinging, pouring, throwing and depositing a staining, defacing and discoloring liquid and mixture did injury [sic] property of the United States, that is, interior and exterior walls, floors and carpet, photographs, pictures, photographic and picture mattes, photograph and picture frames, flags, ceilings, doors, and display cases and display case mattes at building number 468, the Headquarters of the School of Americus, Fort Benning Military Reservation, Georgia, thereby causing damage to such property in excess of \$100.00, in violation of 18 United States Code Section 1361.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF AMERICA,)	MOTION TO
)	<u>RECUSE</u>
Plaintiff,)	Cr. No.
v.)	91-93-COL-JRE
ROY LAWRENCE BOURGEOIS,)	
Defendant.)	

Defendant, *pro se*, hereby moves the Court for an Order disqualifying the Honorable J. Robert Elliott, United States District Judge for the District of Georgia, on the grounds that he has a personal bias or prejudice against the defendant and/or in favor of the plaintiff pursuant to Title 28, United States Code §§455 and 144.

This Motion is based upon the Indictment, all the records and files in the above-entitled action, all the records and files in Docket No. 83-316-COL, including the transcript of trial and sentencing of that matter on September 14, 1983, the Affidavit of defendant, the attached Memorandum of Law and any and all other matters which may be presented prior to or at the time of hearing of said Motion.

Dated:

By: _____
Roy L. Bourgeois, *pro se*
2420 Fort Benning Road
Apartment 1
Columbus, Georgia 31903
Telephone: (404) 682-5369

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

UNITED STATES OF	:	CRIMINAL NO:
AMERICA	:	91-93-COL (JRE)
vs.	:	
JOHN PATRICK LITEKY,	:	
CHARLES JOSEPH LITEKY,	:	
and ROY BOURGEOIS	:	

ORDER ON DEFENDANTS' MOTION TO RECUSE

The Court has carefully reviewed the motion of the defendants in the above captioned matter requesting recusal of this Court in the trial of said matter.

The Court finds that the motion for recusal and the documents in support thereof are insufficient on their face to warrant granting the relief sought. Said motion is insufficient in the following particulars, to-wit:

The main thrust of the motion alleges bias on the part of this Court primarily against Defendant Bourgeois as a result of a bench trial of that defendant before this court in 1983 in Criminal No: 83-316-COL. All allegations of bias resulting from that trial arise out of matters occurring during the course of that case. Matters arising out of the course of judicial proceedings are not a proper basis for recusal under either Title 18 United States Code Section 144 or Title 18 United States Code Section 455. *In re Corrugated Container Antitrust Litigation*, 614 F.2d 958 (5th Cir. 1980), *cert. denied*, 101 S.Ct. 244; *Davis v. Board of*

School Commissioners, 517 F.2d 1044 (5th Cir. 1975), *cert. denied* 425 U.S. 944.

All other factual allegations contained in the motion to recuse and its supporting documents are conclusory in nature, do not state any particulars in which this Court is supposed to be biased either against the defendants or toward the government, and pertain only to the general background and associations of the Court. Additionally, such facts are not of such nature that an objective, disinterested lay observer would entertain a significant doubt about this Court's impartiality based thereon. *United States v. Alabama*, 828 F.2d 1532 (11th Cir. 1987), *cert. denied*, 108 S.Ct. 2857.

The defendants' motion for recusal being insufficient under the requirement both Title 18 United States Code Section 144 and Title 18 United States Code 455, same is denied.

SO ORDERED this 25 day of February, 1991.

/s/ J. Robert Elliott
J. ROBERT ELLIOTT
UNITED STATES DISTRICT
JUDGE

UNITED STATES DISTRICT COURT

MIDDLE District of GEORGIA

UNITED STATES OF AMERICA

v.

ROY LAWRENCE BOURGEOIS

(NAME OF DEFENDANT)

**JUDGMENT INCLUDING SENTENCE
UNDER THE SENTENCING REFORM ACT**

Case Number 91-93-COL. 03

Peter Thompson, Minneapolis, MN
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)_____.

☒ was found guilty on count(s) 1 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section

18 USC 1361

Nature of Offense

damage to U.S. Government property with a value in excess of \$100.00.

Count Number(s)

1

The defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s)

☒ Count(s) 2, 3 & 4 ~~(is)~~ (are) dismissed on the motion of the United States.

☒ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.

☐ It is ordered that the defendant shall pay to the United States a special assessment of \$____, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
434-54-4376

Defendant's mailing address:
2420 Ft. Benning Road
Columbus, GA 31903

Defendant's residence address:

June 21, 1991
Date of Imposition of Sentence

/s/ (illegible)

Signature of Judicial Officer

J. Robert Elliott, U.S. District Judge
Name & Title of Judicial Officer

June 25, 1991
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 16 Months

[] The Court makes the following recommendations to the Bureau of Prisons:

[X] The defendant is remanded to the custody of the United States Marshal.

[] The defendant shall surrender to the United States Marshal for this district,

a.m.

[] at ___p.m. on ____.

[] as notified by the Marshal.

[] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

[] before 2 p.m. on ____.

[] as notified by the United States Marshal.

[] as notified by the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 2 YEARS. In addition to the standard conditions, the following conditions are imposed:

1. The defendant shall be prohibited from possessing a firearm or other dangerous weapon.
2. The defendant shall not enter or go on the grounds of any military reservation or property of any branch of the Armed Services of the U.S. Government.

When on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of

supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- [] The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on probation or supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another Federal, state or local crime;
- 2) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 3) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) the defendant shall support his or her dependents and meet other family responsibilities;
- 6) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) the defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;

- 8) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

These conditions are in addition to any other conditions imposed by this Judgment.

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of \$50.00, consisting of a fine of \$-0- and a special assessment of \$50.00.

[X] These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

Count 1.

The Court has determined that defendant does not possess the financial ability to pay additional fines and waives imposition of said fines or alternative sanctions.

This sum shall be paid [X] immediately.
[] as follows:

[] The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

[] The interest requirement is waived.

[] The interest requirement is modified as follows:

RESTITUTION, FORFEITURE, OR
OTHER PROVISIONS OF THE JUDGMENT

The defendant shall pay restitution to the U.S. Government in the amount of \$636.47 at the rate of \$100.00 per month, thru the U.S. Attorney.

United States District Court
Middle District of GEORGIA

UNITED STATES OF
AMERICA

V.

JOHN PATRICK LITEKY
(Name of Defendant)

JUDGMENT
INCLUDING
SENTENCE
UNDER THE
SENTENCING
REFORM ACT

Case Number
91-93-COL. 01

Waived
Defendant's
Attorney

THE DEFENDANT:

[] Pleaded guilty to count(s)_____

[X] was found guilty on count(s) 1 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section

18 USC 1361

Nature of Offense

Damage to U.S. Government property with a value in excess of \$100.00

Count Number(s)

1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The Defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).
- ☒ Count(s) 2,3 & 4 ~~(is)~~ (are) dismissed on the motion of the United States.
- ☒ The mandatory special assessment is included in the portion of this judgment that imposes a fine.
- ☐ It is ordered that the defendant shall pay to the United States a special assessment of \$ _____, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. Number:
267-50-7406

Defendant's mailing address:
1933 Park Avenue

Baltimore, MD 21217

Defendant's Residence address:

June 21, 1991

Date of Imposition of Sentence

J. Robert Elliott

Signature of Judicial Officer

J. Robert Elliott, U.S. District Judge

Name & Title of Judicial Officer

June 25, 1991

Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 6 months.

- ☐ The Court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district.
- ☐ at ___ a.m. p.m. on _____.
- ☐ as notified by the Marshal.
- ☒ The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☒ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____,
with a certified copy of this judgment.

United States Marshal

By _____
Deputy Marshal

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of \$50.00, consisting of a fine of \$0- and a special assessment of \$50.00.

[X] These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

Count 1.

The Court has determined that defendant does not possess the financial ability to pay additional fines and waives imposition of said fines or alternative sanctions.

This sum shall be paid [X] immediately.
[] as follows:

[] The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

[] The interest requirement is waived.

[] The interest requirement is modified as follows:

**RESTITUTION, FORFEITURE, OR
OTHER PROVISIONS OF THE JUDGMENT**

The defendant shall pay restitution to the United States Government in the amount of \$636.47, within 6 months, thru the U.S. Attorney.

United States District Court
Middle District of GEORGIA

UNITED STATES OF
 AMERICA

V.

CHARLES JOSEPH LITEKY
 (Name of Defendant)

JUDGMENT
 INCLUDING
 SENTENCE
 UNDER THE
 SENTENCING
 REFORM ACT

Case Number
 91-93-COL. 02

Waived
 Defendant's
 Attorney

THE DEFENDANT:

[] Pleaded guilty to count(s)_____

[X] was found guilty on count(s)~~1~~ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section

18 USC 1361

Nature of Offense

Damage to U.S. Government property with a value in excess of \$100.00

Count Number(s)

1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- [] The Defendant has been found not guilty on count(s)_____, and is discharged as to such count(s).
- [X] Count(s) 2,3 & 4 ~~(is)~~ (are) dismissed on the motion of the United States.
- [X] The mandatory special assessment is included in the portion of this judgment that imposes a fine.
- [] It is ordered that the defendant shall pay to the United States a special assessment of \$_____, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. Number:

261-36-1808

Defendant's mailing address:
14018 Burnt Woods Road

Glenelg, MD 21737

Defendant's Residence address:

June 21, 1991

Date of Imposition of Sentence

/s/ J. Robert Elliott

Signature of Judicial Officer

J. Robert Elliott, U.S. District Judge
 Name & Title of Judicial Officer

June 25, 1991
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 6 months.

- ☐ The Court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district.
- ☐ at ___ a.m. p.m. on _____.
- ☐ as notified by the Marshal.
- ☒ The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
- ☐ before 2 p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____,
with a certified copy of this judgment.

United States Marshal

By _____
Deputy Marshal

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of \$50.00, consisting of a fine of \$-0- and a special assessment of \$50.00.

- ☒ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

Count 1.

The Court has determined that defendant does not possess the financial ability to pay additional fines and waives imposition of said fines or alternative sanctions.

This sum shall be paid ☒ immediately.
☐ as follows:

- ☐ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

**RESTITUTION, FORFEITURE, OR
OTHER PROVISIONS OF THE JUDGMENT**

The defendant shall pay restitution to the United States Government in the amount of \$636.47, within 6 months, thru the U.S. Attorney.

United States Court of Appeals,
Eleventh Circuit,

Sept. 28, 1992.

UNITED STATES of America,
Plaintiff-Appellee,

v.

John Patrick LITEKY, Charles Joseph
Liteky, Roy Lawrence Bourgeois,
Defendants-Appellants.

No. 91-8577.

Appeals from the United States District Court for the
Middle District of Georgia

Before ANDERSON, Circuit Judge, HILL and
ESCHBACH*, *Senior Circuit Judges*.

PER CURIAM.

In 1990, Charles Liteky, Patrick Liteky, and Father Roy Bourgeois spilled blood on federal property as part of a protest against the United States' involvement in El Salvador. The defendants were convicted of violating 18 U.S.C. § 1361, which prohibits "willfully injur[ing] . . . any property of the United States. . . ." Before the trial, the defendants requested that the district judge recuse himself, *see* 28 U.S.C. § 144; 28 U.S.C. § 455(a), because he had presided over Father Bourgeois' 1983 conviction, which also related to a protest regarding United States policy toward El Salvador. But matters arising out of the course of judicial proceedings are not a

* Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation.

proper basis for recusal. *United States v. Alabama*, 828 F.2d 1532, 1540 (11th Cir. 1987), *cert. denied*, 487 U.S. 1210, 108 S.Ct. 2857, 101 L.Ed.2d 894 (1988); *In re Corrugated Container Antitrust Litigation*, 614 F.2d 958 (5th Cir.), *cert. denied*, 449 U.S. 888, 101 S.Ct. 244, 661 L.Ed.2d 114 (1980); *Davis v. Board of School Comrs.*, 517 F.2d 1044 (5th Cir.1975), *cert. denied*, 425 U.S. 944, 96 S.Ct. 1685, 48 L.Ed.2d 188 (1976). Therefore, the district court properly rejected the motion. The defendants also contend that the district court denied them a fair trial. After carefully reviewing the defendants' arguments as well as the record on appeal, we have concluded that those arguments are without merit.

Conclusion

We AFFIRM the convictions.

United States Court of Appeals
FOR THE ELEVENTH CIRCUIT
No. 91-8577

District Court Docket No. CR91-93

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN PATRICK LITEKY,
CHARLES JOSEPH LITEKY,
ROY LAWRENCE BOURGEOIS,

Defendants-Appellants.

Appeals from the United States District Court
for the Middle District of Georgia

Before ANDERSON, Circuit Judge, HILL and
ESCHBACH*, Senior Circuit Judges.

* Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the
Seventh Circuit, sitting by designation.

Entered: September 28, 1992
For the Court: Miguel J. Cortez, Clerk
By: /s/ Karleen Illegible
Deputy Clerk

ISSUED AS MANDATE: Oct. 20, 1992

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgments of convictions of the said District Court in this cause be and the same are hereby AFFIRMED.

Supreme Court of the United States

No. 92-6921

John Patrick Liteky, Charles Joseph Liteky
and Roy Lawrence Bourgeois,

Petitioners

v.

United States

ON PETITION FOR WRIT OF CERTIORARI to the
United States Court of Appeals for the Eleventh Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

May 24, 1993
